

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NATIONSTAR MORTGAGE LLC,

Plaintiff,

3:13-cv-01793-PK

v.

OPINION AND ORDER

H. JEROME DECKER, WEST COAST
BANK, ASSET SYSTEMS INC.,
AMERICAN EXPRESS CENTURION
BANK, QUOIN DESIGN LLC, MARINA
ELAINE DECKER, and OCCUPANTS OF
THE PROPERTY,

Defendants.

PAPAK, Magistrate Judge:

Plaintiff Nationstar Mortgage LLC ("Nationstar") filed this judicial-foreclosure action

seeking to foreclose on property owned by H. Jerome Decker. On October 30, 2014, the parties held a conference regarding a discovery dispute arising from Decker's attempt to broaden the scope of discovery to include a wide array of items related to an allegedly forged promissory note. After that conference, the parties submitted supplemental briefing to clarify their positions on the dispute. Although Decker did not formally move to compel, I construe his filings as a motion to compel the production of documents. For the reasons set forth below, that motion is granted in part and denied in part.

DISCUSSION

Based on the briefs, declarations, and the October 30 conference, it appears that Decker's allegation of potential forgery of the promissory note ("the Note") solely motivate his request for an increase in the scope of discovery.

A. The Seven Proposed Categories of Items Related to the Note

Beyond requesting additional copies of the Note, Decker lists seven additional categories of items that would purportedly reveal "key information of the custody, condition, and location[] of the Note and other vital Documents." Defendant's Brief in Support of Compelling the Production of Documents ("Def.'s Compel Br."), #40, 3. Decker supports his assertions of forgery with an expert's inspection of the Note. That inspection took place at the offices of Nationstar's counsel and allegedly revealed questionable inconsistencies in the Note. *See generally* Decl. of James A. Green, #41.

However, "the standard of relevancy is . . . not so liberal as to allow a party to . . . explore a matter which does not presently appear germane on the theory that it might conceivably become so." *Food Lion, Inc. V. United Food & Comm'l Workers Int'l Union, AFL-CIO-CLC*,

103 F.3d 1007, 1012–13 (D.C. Cir. 1997). While Decker is correct in asserting that Fed. R. Civ. P. 26(b)(1) brings into the scope of discovery information relevant to the custody, condition, and location of documents, the totality of his additional proposed discovery parameters goes beyond relevance. While compelling, the mere assertion of forgery does not afford Decker the discovery latitude he requests, which encompasses an array of categories largely irrelevant to the remaining claims and affirmative defenses. *See* Def.’s Compel Br., #40, 7. Thus, Decker’s motion is denied as to the seven additional categories of evidence proposed in his supplemental brief.

B. Additional Copies of the Note

This court issued prior findings asserting that Decker “is not prejudiced . . . from asserting any arguments relating to the differences in the endorsements between the two notes,” even though his previously posed counterclaims asserting fraud in the inducement were dismissed. Pl.’s Mem. Objecting to Scope of Disc., #39, 6. To that end, Decker’s attempted exploration of his forgery allegations is not pre-empted in this case.

Nationstar properly asserts, however, that many of Decker’s requests are irrelevant due to very broad instrument enforcement allowances in judicial foreclosure proceedings. Nationstar proffers language from this court elaborating on entitlement to enforce upon promissory notes in similar proceedings:

An instrument, such as a promissory note, may be enforced by 1) the holder of the instrument, 2) a non-holder in possession of the instrument, who has the rights of a holder, 3) a person not in possession of the instrument who is entitled to enforce under other provisions. ORS 73.0301. A person may be entitled to enforce the instrument even if they are not the owner or are in wrongful possession of the instrument. *Id.* A party in possession of an instrument payable to bearer is the holder of that instrument. ORS 71.2010(2)(u)(A).

Theiss v. CitiMortgage, Inc., 2013 WL 4516764, *3 (D. Or. 2013). Although Nationstar is

correct in its contentions, it does not address the possibility of forgery. While the above enforcement allowance includes even wrongful possession, it does not account for allegedly forged instruments. To argue that the Decker's argument of the Note's potential forgery is irrelevant, then, is not supported by the law.

While I agree with Nationstar that the extent of discovery requested by Decker is overbroad, I believe that additional copies of the note potentially supporting Decker's assertions of forgery—which is an argument relevant to Decker's remaining affirmative defenses—fall within the scope of discovery. Decker's request for an order compelling the production of any copies of the Note yet withheld from him is granted so that he may inspect as needed. This applies to those copies from the files of McCarthy Holthus, Nationstar's prior counsel in this case, which Nationstar asserts should be "more appropriately requested through current counsel." Pl.'s Mem. Objecting to Scope of Disc., #39, 6.

Finally, I acknowledge that the opinion provided by James Green, Decker's document expert, regarding his detailed inspection of the Note is unconvincing as to the Note's alleged forgery. The conjecture contained therein does little to support Decker's very serious allegations. Decl. of James A. Green, #41, 2 (noting that the first page of the Note may not be the original first page and detailing differences in pen colors and font size to support falsification claims). However, Decker is not foreclosed upon reasserting his motion to broaden the scope of discovery should inspection of the requested copies of the Note reveal additional convincing evidence of forgery.

///

///

CONCLUSION

Based on the foregoing, Decker's motion to compel additional discovery is denied in part and granted as it applies to copies of the Note not yet inspected by or provided to Decker.

IT IS SO ORDERED.

Dated this 9th day of December, 2014.

A handwritten signature in black ink, appearing to read "Paul Papak", written over a horizontal line.

Honorable Paul Papak
United States Magistrate Judge